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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re T.V. et al., Persons Coming
Under the Juvenile Court Law.

B290234
(Los Angeles County
Super. Ct. No.
18CCJP00956)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

CARLTON V.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles
County, Kim L. Nguyen, Judge. Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal, for
Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and William D. Thetford, Principal
Deputy County Counsel, for Plaintiff and Respondent.

Carlton V. (Father) appeals from the juvenile court's jurisdictional findings and dispositional order removing his then four-year-old son, T.V., and two-year-old daughter, J.V, from his custody. He concedes the juvenile court has jurisdiction over the children based on the sustained allegations against M.H. (Mother) under Welfare and Institutions Code¹ section 300, subdivisions (a), (b)(1), and (j), because Mother has not appealed from the findings. Nonetheless, he contends we should exercise our discretion and consider the jurisdictional findings made against him. Father also argues there is insufficient evidence to remove the children from his custody under section 361, subdivision (c)(1). We affirm.

FACTUAL AND PROCEDURAL HISTORY

A. Siblings' Dependency Cases

T.V. and J.V. have five older siblings: Darnell H., Kad. H. (Kad), K.V., K.H., and Thelma V. Father is the biological father of all the children except Darnell.

On May 22, 2008 the juvenile court declared siblings Darnell and Kad to be dependents of the court under section 300, subdivisions (a), (b)(1), and (j). The court sustained the allegations that six-month-old Kad had a metaphyseal fracture involving the

¹ Further statutory references are to the Welfare and Institutions Code.

medial aspect of the distal right femur (a thighbone fracture just above the knee), with deep tissue swelling and a subperiosteal hematoma (pelvic blood drain condition) during his January 26, 2008 medical examination; Mother's and Father's explanations were inconsistent with Kad's injuries; and Kad's injuries were consistent with nonaccidental trauma.

On September 30, 2008 the juvenile court assumed jurisdiction over two-month-old sibling K.V. based on the injuries Kad suffered while in the parents' custody. In July 2009 Father was granted unmonitored visits with Darnell, Kad, and K.V. However, on September 3, 2009 the Los Angeles County Department of Children and Family Services (the Department) received a referral alleging Father physically abused K.V. On July 25, 2009 K.V.'s foster mother observed bruises on K.V.'s left ear after returning from an unmonitored visit with Father. Father claimed K.V. fell on the concrete. On August 9, 2009 K.V. had a red mark on his nose and left cheek. Father stated K.V. got the mark from falling asleep on the television remote.

On August 16, 2009 K.V.'s foster mother observed bruises on the front and back of K.V.'s neck after another unmonitored visit with Father. Father explained "the harness was too tight." A doctor examined K.V. the next day and concluded Father's explanation was inconsistent with K.V.'s injuries. Father later admitted he must have "grabbed [K.V.'s] neck too hard" while he was trying to get K.V. out of the harness.

On August 24, 2009 a nurse practitioner conducted a forensic examination of K.V. and determined K.V.'s injuries on July 25 and August 9 and 16 were inconsistent with Father's various explanations, but consistent with Father's admission he grabbed K.V. too hard. The nurse practitioner reported the bruises were

nonaccidental, and K.V.'s neck bruises were caused by being grabbed around the neck with too much force.

In 2010 the juvenile court sustained the allegations in a second amended petition filed on behalf of sibling K.H. The court declared K.H. to be a dependent of the court based on Kad's injuries, Mother's mental health problems, and Father's substantiated physical abuse of K.V. The court returned Darnell to Mother's custody because he was then 13 years old, and could disclose any abuse against him.

On February 14, 2013 the juvenile court assumed jurisdiction over sibling Thelma based on Kad's injuries and the parents' failure to reunify with Kad, K.V., and K.H. During the period from 2010 to 2014 Kad, K.V., K.H., and Thelma were either adopted or placed in permanent placements. Mother's visits with these children ended in 2012. Father also lost contact with his four older children.

B. *Current Referral Investigation*

On February 8, 2018 the Department received a referral after Mother was arrested for physical abuse of four-year-old T.V. The caller alleged Mother hit T.V. with a wooden spatula on his hand, leaving a red mark on his hand and a cut on his finger. In response to the call, two social workers went to the police station to investigate the referral.

Mother told the social workers she was trying to put T.V. and two-year-old J.V. into the car after grocery shopping, but the children were acting up. T.V. did not want to get into his car seat, so she grabbed a wooden spoon and hit his hand "a couple of times." The maternal grandmother, who was with Mother and the children, confirmed Mother hit T.V. A witness saw Mother hit T.V. and "flag[ged] down" two police officers. The officers took Mother into

custody and detained the children. The officers reported T.V. was crying and had a red mark on hand and a cut on his finger.

T.V. told the social workers he had hurt his finger, but he could not explain how. The social workers observed he had a cut on his swollen right index finger, a small scar on his nose, a small scratch on his forehead, and two scars on his left arm. He could not explain how he got the marks on his body. T.V. said he lived with Mother, and at times with Father.

The social workers also spoke with J.V., but they were unable to obtain any meaningful statement from her. They observed J.V. had a small scar on the inside of her left arm, three red circular marks on her left backside, and a large mark on her right side.

At the time of the incident, Father and Mother did not live together, but they were cordial with each other and got along well for the children's sake. Father decided to live separately from Mother because of the previous dependency case, in which he and Mother were blamed for Kad's bone fracture. He wanted custody of T.V. and J.V. and indicated he had family support and a bed for them. At the social workers' request, the police released the children to Father.

C. Petition and Detention Hearing

On February 12, 2018 the Department filed a petition on behalf of T.V. and J.V. pursuant to section 300, subdivisions (a), (b)(1), and (j). Counts a-1, b-1, and j-1 were based on the allegation Mother physically abused T.V. by striking his hand with a wooden spoon, inflicting a bleeding laceration and swelling on his finger and red marks to his hand. In addition, their siblings, Kad, K.V., K.H., and Thelma, were prior dependents of the juvenile court and received permanent placement services because of the parents'

severe physical abuse of Kad. Mother's physical abuse of T.V. endangered his physical health and safety, and placed T.V. and J.V. at risk of serious physical harm, damage, and danger. Counts a-2, b-2, and j-2 alleged facts relating to Kad's injuries in January 2008 while in the parents' care. Counts a-2, b-2, and j-2 state, "Such deliberate, unreasonable and or neglectful acts on the part of the mother and the father to the children's sibling [Kad] endangers the children's physical health and safety, placing [T.V. and J.V.] at risk of suffering serious physical harm, damage, danger and physical abuse."

At the February 13, 2018 detention hearing, the court detained T.V. and J.V. from Mother and released them to Father. But the court continued the hearing as to Father so he could be present because the Department requested the court detain the children from Father. At the February 14 detention hearing, the trial court released T.V. and J.V. to Father on the condition Father enroll in parenting classes, participate in family preservation services, and comply with frequent unannounced home visits from the Department. In addition, the court required Darnell (by then an adult) to reside with Father, T.V., and J.V. to ensure the children's safety.

D. *Jurisdiction and Disposition Report*

The April 10, 2018 jurisdiction and disposition report stated the Department received a referral alleging Father was under the influence of marijuana while caring for T.V. and J.V. On March 22, 2018 Father brought T.V. and J.V. to a medical facility for a checkup, and various staff members in different sections of the medical facility smelled a strong marijuana odor on Father during the visit. Father disclosed he used marijuana for knee pain and

recreational use, but had not used marijuana that day. However, the social worker stated Father had admitted he used marijuana before arriving at the medical facility. The reporting party stated Father failed to address his children's behavior because he was intoxicated. The children ran around the office, climbed and jumped on furniture, and played with the trash cans. The trash cans had to be removed to stop the children from misbehaving.

The jurisdiction and disposition report also discussed the siblings' prior dependency cases, including the substantiated referral relating to Father's physical abuse of K.V. in July and August 2009. The report also stated Father had sexually abused a nephew in 1997 and physically abused another nephew and a niece in 2001.

E. *Last Minute Information for the Court*

The April 24, 2018 last minute information for the court reported on April 18 T.V. sustained an injury to his lip, mouth, and tooth while in Father's custody. Father said T.V. fell as Father was trying to stop him from running out of the apartment. But when Father brought T.V. to the hospital, Father told hospital staff T.V. fell from his scooter. In addition, on April 19, 2018 the social worker visited the family and saw J.V. had two bruises in the healing stages with scabs on both her arms near her elbows. Father stated J.V. injured herself when she fell while running. He denied he was under the influence of marijuana when J.V. was injured. Father said he last used marijuana "[a] week ago, week and a half ago or maybe two weeks ago." However, Father tested positive for marijuana on March 19 and April 13, at high levels. On April 25, 2018 T.V. and J.V. were detained from Father.

F. *Jurisdiction and Disposition Hearing*

At the May 1, 2018 jurisdiction and disposition hearing, the juvenile court declared T.V. and J.V. to be dependents of the court under section 300, subdivisions (a), (b)(1), and (j). The court sustained the allegations in counts a-1, b-1, j-1, and j-2, but dismissed counts a-2 and b-2.² The court explained, “I do believe that the (j) count is the most appropriate allegation that captures the risk of harm here. And to specifically address the point of ongoing risk of harm, the court does recognize that [Kad’s] allegation was sustained approximately 10 years ago. However, given the information before the court today, [with] injuries to the children as of April, the court does believe that there is ongoing risk of harm that would warrant sustaining of the (j)(2) count.”

Turning to the disposition, the court removed T.V. and J.V. from the parents’ custody under section 361, subdivision (c)(1) “based on all the evidence before the court, coupled with the evidence admitted and judicial notice taken from the related cases.” The court ordered the Department to provide family reunification services to Mother and Father. The court ordered Father to participate in random or on demand consecutive drug testing, to show decreasing marijuana levels. The court ordered Father to participate in a full drug rehabilitation program with random drug testing if he missed a test or tested positive. In addition, the court ordered Father to attend anger management classes, parenting classes, and individual counseling to address child protection, safety, and past trauma. The court granted monitored visits for Father with a monitor approved by the Department.

² At Mother’s request the juvenile court amended counts a-1, b-1, and j-1 by striking the allegation that on February 8, 2018 Mother was arrested for her physical abuse of T.V.

DISCUSSION

A. *Father's Appeal from the Jurisdictional Findings Is Not Justiciable*

“When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.” (*In re I.J.* (2013) 56 Cal.4th 766, 773; accord, *In re M.R.* (2017) 7 Cal.App.5th 886, 896 [“[a]s long as there is one unassailable jurisdictional finding, it is immaterial that another might be inappropriate”]; *In re Briana V.* (2015) 236 Cal.App.4th 297, 309 [“[W]e need not address jurisdictional findings involving one parent where there are unchallenged findings involving the other parent.”].) An appeal is not justiciable where “no effective relief could be granted . . . , [because] jurisdiction would be established regardless of the appellate court’s conclusions with respect to any such [challenged] jurisdictional grounds.” (*In re Madison S.* (2017) 15 Cal.App.5th 308, 329; accord, *In re I.A.* (2011) 201 Cal.App.4th 1484, 1490 [“An important requirement for justiciability is the availability of ‘effective’ relief—that is, the prospect of a remedy that can have a practical, tangible impact on the parties’ conduct or legal status.”].)

Nevertheless, “[c]ourts may exercise their ‘discretion and reach the merits of a challenge to any jurisdictional finding when the finding (1) serves as the basis for dispositional orders that are

also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) “could have other consequences for [the appellant], beyond jurisdiction” [citation].” (*In re D.P.* (2015) 237 Cal.App.4th 911, 917, quoting *In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763; accord, *In re Madison S.*, *supra*, 15 Cal.App.5th at p. 329; *In re J.C.* (2014) 233 Cal.App.4th 1, 4.)

Father concedes even if we reverse the jurisdictional findings made against him, the juvenile court would continue to have jurisdiction because of the sustained allegations as to Mother. He contends we should exercise our discretion to consider the jurisdictional findings against him because he is prejudiced by being deemed an “offending parent” when he is not one. But Father has not shown prejudice because the jurisdictional findings against Father in counts a-1, b-1, j-1, and j-2 involve his physical abuse of Kad in January 2008 and his failure to reunify with Kad, K.V., K.H., and Thelma. The sustained findings and evidence in the siblings’ dependency cases can be considered in future dependency proceedings, regardless of the outcome of this appeal. (See *In re Madison S.*, *supra*, 15 Cal.App.5th at p. 330 “[T]he substance of the spanking allegation would almost certainly be available in any future dependency or family court proceeding, regardless of any determination on our part as to whether it formed an independent basis for juvenile court jurisdiction.”]; *In re J.C.*, *supra*, 233 Cal.App.4th at p. 4 [“Even if the current jurisdictional finding were erased, father is still left with an established history with [the Department] based on incidents involving previous children from his relationship with mother, children of whom [the Department] earlier assumed custody.”]; see also *In re N.S.* (2016)

245 Cal.App.4th 53, 63 [mother's appeal was moot because appellate court could not grant effective relief where evidence supporting allegations in petition "would almost certainly be available in any future dependency proceedings"].)

B. *Substantial Evidence Supports the Removal Order*

"At the dispositional hearing, a dependent child may not be taken from the physical custody of the parent under section 361 unless the court finds there is clear and convincing evidence there is or would be a substantial danger to the child's physical health, safety, protection, or physical or emotional well-being if returned home, and that there are no reasonable means to protect the child's physical health without removing the child (detriment finding)." (*In re D.B.* (2018) 26 Cal.App.5th 320, 328; see § 361, subd. (c)(1).) The juvenile court must determine "whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home" and "shall state the facts on which the decision to remove the minor is based." (§ 361, subd. (e).)

"In determining whether a child may be safely maintained in the parent's physical custody, the juvenile court may consider the parent's past conduct and current circumstances, and the parent's response to the conditions that gave rise to juvenile court intervention." (*In re D.B.*, *supra*, 26 Cal.App.5th at p. 332; accord, *In re Alexzander C.* (2017) 18 Cal.App.5th 438, 451.) "A removal order is proper if based on proof of parental inability to provide proper care for the child and proof of potential detriment to the child if he or she remains with the parent. [Citation.] "The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.'" (*Alexzander C.*, at p. 451; accord,

D.B., at p. 328.) We review the entire record to determine whether the removal order is supported by substantial evidence.

(*Alexzander C.*, at p. 451; accord, *D.B.*, at pp. 328-329 [“The appellant has the burden to demonstrate there is no evidence of a sufficiently substantial nature to support the findings or orders.”].)

Father argues there was no substantial evidence to support the removal order because he was not present when Mother abused T.V. on February 8, 2018, his marijuana use did not interfere with his ability to care for the children, and the facts from the siblings’ prior dependency cases were too outdated to be relevant. We conclude otherwise.

Contrary to Father’s assertion, his marijuana use interfered with his ability to supervise and care for the children. On March 2, 2018 Father was under the influence of marijuana and failed to supervise his children at the medical office. Four-year-old T.V. and two-year-old J.V. ran around in the office, climbed and jumped on furniture, and played with the trash cans. Father did not control their behavior; instead, the trash cans had to be removed to stop the children from misbehaving. In addition, on April 18, 2018 T.V. sustained an injury to his lip, mouth, and tooth while in Father’s custody. The next day, during a home visit, the social worker observed two bruises with scabs on both of J.V.’s arms. The children suffered these injuries while in Father’s care notwithstanding the juvenile court taking reasonable steps at the detention hearing to avoid removal from Father, including conditioning their release to Father on their adult sibling Darnell living in the home, Father immediately enrolling in parenting classes, and the Department making unannounced home visits. Moreover, the children were at substantial risk of abuse and neglect because of Father’s physical abuse of Kad in 2008 and K.V. in 2009

while in Father's care. Accordingly, substantial evidence supports the removal of T.V. and J.V. from Father's custody. (*In re Alexzander C.*, *supra*, 18 Cal.App.5th at p. 451; *In re D.B.*, *supra*, 26 Cal.App.5th at pp. 328-329.)

DISPOSITION

We affirm the jurisdictional findings and dispositional orders.

FEUER, J.

WE CONCUR:

PERLUSS, P. J.

ZELON, J.